

121 FERC ¶ 61,174  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Pacific Gas and Electric Company

Docket No. EL07-91-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued November 15, 2007)

1. In this order, we grant Pacific Gas and Electric Company's (PG&E) petition for a declaratory order reaffirming PG&E's continuing use of a Commission-approved revenue sharing mechanism for revenues generated by certain specific secondary uses of PG&E's jurisdictional assets. Additionally, we will grant PG&E's modifications to the product and services category definitions.

**Background**

2. On March 29, 2000, the Commission initially authorized PG&E's proposal for a revenue sharing ratemaking treatment for certain, specific secondary uses of its jurisdictional assets.<sup>1</sup> The Commission allowed PG&E to credit the anticipated net revenues on a 50-50 basis between its ratepayers and shareholders, with shareholders bearing any risk of loss.<sup>2</sup> The Commission provided guidance with

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<sup>1</sup> See *Pacific Gas and Electric Co.*, 90 FERC ¶ 61,314 (2000) (March 29 Order). In the March 29 Order, the Commission approved the following PG&E secondary products and services categories: (1) right-of-way leases and leases for space on transmission facilities for telecommunications (right-of-way and facility space category); (2) transmission tower licenses for wireless antennas (wireless antennas leases category); (3) right-of-way property leases for farming, grazing or nurseries (land use category); (4) licenses of intellectual property (including a portable oil degasification process and scheduling software) (technology and license category); and (5) transmission maintenance and consulting services (including energized circuit transformer oil testing, and circuit breaker testing) to other utilities and large customers (maintenance and consulting category).

<sup>2</sup> PG&E defined net revenues as the gross revenue from the sale of the product less both incremental costs and taxes. PG&E proposed that the incremental costs associated with the product, including both recurring and non-

respect to the revenue sharing mechanism stating that the revenues and costs should be accounted for on a product-by-product basis, in order to allocate the downside risk to those seeking opportunities for reward (i.e., the shareholders). In addition, since PG&E was proposing to use forecast rather than actual revenues and expenses in calculating the shared net revenues, the Commission granted interim approval for a three-year time period, and directed PG&E to submit information regarding the effect of the revenue sharing mechanism on the transmission rates concurrent with the filing of its first rate case following that three-year time period to allow the Commission to examine concrete data on these lines of business and to determine the proper risk/reward ratio at the end of the three-year period.<sup>3</sup>

3. On, January 28, 2004, three years later and in conjunction with PG&E's Transmission Owner Tariff (TO7) rate case, the Commission again approved the continued use of PG&E's revenue sharing ratemaking treatment for certain, specific secondary uses of its jurisdictional assets.<sup>4</sup>

4. Recently, on July 30, 2007, PG&E filed its latest Transmission Owner Tariff (TO10) rate case in Docket No. ER07-1213-000.

### **Instant Application**

5. On August 16, 2007, PG&E filed this petition for declaratory order requesting the Commission to extend the terms of the March 29 Order, and to reaffirm the continued use of the revenue sharing ratemaking treatment approved in the March 29 Order. PG&E claims that the revenue sharing mechanism for secondary products and services continues to favor ratepayers.

6. PG&E asserts that the revenue sharing mechanism for secondary products and services provides benefits, such as enhanced reliability, to PG&E's transmission customers above and beyond the reduction in rates. For example, PG&E states that the attachment of wireless antennas to, and stringing fiber optic cable on, the transmission towers has sometimes required that the towers be fortified. PG&E notes that, rather than degrading the transmission system, the

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recurring costs specifically attributable to each product, be accounted for separately from the utility costs that appear in FERC numbered accounts.

<sup>3</sup> The three-year time period began on April 1, 2000, the effective date of the proposed PG&E rates in Docket No. ER99-4323-000.

<sup>4</sup> *Pacific Gas and Electric Company*, 106 FERC ¶ 61,058 (2004).

products and services have resulted in stronger and more stable electric transmission facilities. PG&E notes, further, that the static wiring that is strung between towers for telephone companies acts as lightning protection for the transmission system. PG&E asserts that the wireless co-location program has improved system reliability by increasing the frequency of maintenance on certain facilities, and providing additional inspections of towers, poles, right-of-ways and substations during cell site installations and project audits. According to PG&E, these non-revenue benefits derived from the products and services did not result in any costs charged to PG&E's customers for these benefits.

7. PG&E notes that, over the past several years, it has identified new services that it believes can be provided through the existing secondary products and services portfolio.<sup>5</sup> According to PG&E, these opportunities fit into the general framework of the existing categories. Therefore, PG&E is not requesting a wholesale change to the secondary products and services category definitions in this filing. Rather, PG&E requests the Commission approve its proposal to expand and refine the current definitions.

8. Specifically, PG&E proposes: (1) to expand the right-of-way and facility space category to include leasing space on its transmission rights-of-way and on its transmission facilities to companies that provide outdoor lighting and outdoor advertising; (2) to expand the wireless category to provide marketing services for third party-owned poles, towers and other facilities for communication-related purposes; (3) to expand the land use category to include lease opportunities for outdoor lighting, outdoor advertising, storage facilities (vehicle, material, container and self-storage), environmental mitigation, parks and recreation, private recreation, specialized usage and other compatible uses; and to expand the maintenance and consulting category to include other services, such as transformer repairs, rentals, and sales as well as transmission system engineering, planning, training and environmental consulting; (4) to expand the "land use" category to explore opportunities to sell or trade oil, mineral and excess water rights; and (5) to expand the "technology and license" category to investigate licensing other

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<sup>5</sup> In the March 29 Order, the Commission approved the following secondary products and services categories: (1) right-of-way leases and leases for space on transmission facilities for telecommunications; (2) transmission tower licenses for wireless antennas; (3) right of way property leases for farming, grazing or nurseries; (4) licenses of intellectual property (including a portable oil degasification process and scheduling software); and (5) transmission maintenance and consulting services (including energized circuit transformer oil testing, and circuit breaker testing) to other utilities and large customers.

proprietary software developed by PG&E or for PG&E by a third party to interested parties relating to its electric transmission function.<sup>6</sup>

9. PG&E states that the revenue sharing mechanism for secondary products and services consistently generates revenues in excess of costs. According to PG&E, customers have benefited from this program with a reduction of \$26 million in rates since the year 2000. PG&E asserts that, in the instant application, the revenue credit from the secondary products and services portfolio is forecasted to be approximately \$6.4 million for the year 2008.

10. PG&E argues that the question of whether the revenue sharing approach should continue is a policy question that should be addressed by the Commission generically separate from its TO10 rate filing. PG&E, therefore requests a declaratory order affirming that the revenues from the secondary products and services portfolio should continue to be subject to the same 50-50 revenue sharing that has benefited its customers since the March 29 Order. PG&E also requests the Commission to allow it to expand the secondary products and services definitions to further benefit its customers.

### **Notice of Filing and Pleadings**

11. Notice of PG&E's petition was published in the *Federal Register*, 72 Fed. Reg. 51,221 (2007), with motions to intervene and protest due on or before September 17, 2007. The California Public Utilities Commission filed a notice of intervention. The California Electricity Oversight Board, Modesto Irrigation District, and California Department of Water Resources State Water Project filed timely motions to intervene. M-S-R Public Power Agency and the City of Santa Clara, California (M-S-R/City) filed a motion to intervene and protest. PG&E filed an answer on October 2, 2007.

12. M-S-R/City does not protest the continuation of PG&E's existing revenue sharing from the secondary products and services, and does not object to the concept of expanding the list of previously approved secondary products and services. M-S-R/City, however, requests clarification of certain new examples in the products and services categories, specifically, "environmental mitigation," "specialized usage," and "the sale or trade of oil, mineral and excess water rights." M-S-R/City also is concerned that several of PG&E's proposed new examples of products and services differ from previously approved secondary products and services in that category. M-S-R/City, therefore, questions whether those examples should be placed in those categories for purposes of calculating net

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<sup>6</sup> PG&E's filing, pp. 10-11.

revenue. M-S-R/City also is concerned that the proposed new products and services will be subsidized by the existing products and services categories.

13. In its answer, PG&E argues that M-S-R/City's proposed accounting treatment represents line item accounting that it states is contrary to the revenue sharing for secondary products and services approved by the Commission in the March 29 Order. PG&E asserts that the Commission did not order line-item accounting for each discrete product within a product and service category. PG&E states that its expanded secondary products and categories add additional examples to be included in some of the product categories. According to PG&E, these new examples are additional illustrative examples of an existing category. PG&E states that each of the product categories approved by the Commission in its 2000 Order contains multiple, and related, secondary uses of jurisdictional assets under a single category.

14. PG&E argues that M-S-R/City's proposed discrete product accounting would stifle the innovation that the revenue sharing mechanism has encouraged since 2000. PG&E states that such treatment would prevent it from launching a new effort that it otherwise would have, were it able to take advantage of existing infrastructure in an existing, Commission-approved products and services category.

15. As a final matter, PG&E provides further explanation for its additional examples to the right-of-way property leases category, specifically, "environmental mitigation," "specialized usage," and "the sale or trade of oil, mineral and excess water rights."

## **Discussion**

### **Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PG&E's answer because it has provided information that assisted us in our decision-making process.

### **Declaratory Order**

17. We find that PG&E's revenue sharing mechanism for secondary products and services continues to provide an appropriate incentive that will ensure that the

revenues from such products and services will be maximized for the good of both the ratepayers and shareholders. We also authorize expansion of the categories as proposed by PG&E. In light of our review, we find that PG&E's revenue sharing mechanism, under the specific circumstances as described in the petition, continues to be appropriate and acceptable.

18. M-S-R/City is concerned that several of PG&E's proposed new examples differ substantially from the previously approved products and services, and, therefore, should be placed in new categories for purposes of calculating net revenues. We note that several of the existing pre-approved categories, e.g., the land use, technology and license, and the maintenance and consulting categories, include more than one type of product or service. With the exception of the wireless antenna leases category, we find that PG&E's proposed new examples in the secondary products and services categories conforms with examples in the existing secondary products and services categories approved by the Commission in the March 29 Order. We will, therefore, accept PG&E's proposed new examples.

19. Under the wireless antenna leases category, PG&E leases space on its facilities to cellular and wireless carriers. PG&E claims to have realized the greatest growth in net revenues in this category. PG&E wishes to expand this category definition to include marketing services for third party-owned poles, towers and other facilities for communication. On this point, we will deny PG&E's request. We find that "marketing of third parties' poles, towers and other facilities for communication-related purposes" in the wireless antenna leases category to be a type of consulting service and more reflective of the products and services offered by PG&E in the maintenance and consulting category. PG&E desires to expand its maintenance and consulting services to include transmission system engineering, planning, training, and environmental consulting to other utilities and large customers. Since the wireless antenna and leases category traditionally involved the lease of PG&E's physical assets, and not marketing and consulting to others, we conclude that "marketing of third parties' poles, towers and other facilities for communication-related purposes" should be bundled within the maintenance and consulting category. Since these are like efforts, it would be appropriate to account for these services within the same product and service category.

20. Under PG&E's revenue sharing mechanism, the revenues and costs are accounted for on a product-by-product/service-by-service basis. While net revenues under a product or service category are shared on a 50-50 basis between PG&E's ratepayers and shareholders, the shareholders bear any risk of loss. Given PG&E's proposed modification to the products and services category definitions, M-S-R/City is concerned that the profits from PG&E's successful

existing products or services will subsidize the newly proposed products. This concern is ameliorated by our decision to require PG&E to place the new service of “marketing of third parties’ poles, towers and other facilities for communication-related purposes” in the maintenance and consulting category, a category that has not yet generated any revenue. In this manner, losses in one category will not offset profits in another category.

21. M-S-R/City requests that PG&E provide clarification of the scope of certain of the new categories of products and services, i.e., PG&E’s proposed examples to the right-of-way property leases category, including “environmental mitigation,” “specialized usage,” and the “sale or trade of oil, mineral and excess water rights.” In its answer, PG&E explains that the new examples were added to the existing categories on the premise that they are additional illustrative examples of an existing category. PG&E explains that “environmental mitigation” includes granting right-of-way leases to third parties that intend to improve and preserve the environment of the property as part of an environmental mitigation plan, such as developing additional habitat for an endangered species to offset the loss of its habitat at another site. PG&E explains that examples of “right-of-way property lease for a specialized use” include horse stables, barns, infrastructure for public and private use, landscaping, backyard usage, or film production site locations. PG&E explains that “the sale or trade of oil, mineral, and excess water rights” contemplates the potential for selling or trading such rights to third parties if such natural resources are found on a PG&E right-of-way. We find that the clarifications provided by PG&E in its answer address M-S-R/City’s request for clarification. We find that these new examples are in the appropriate product and service category.

22. While we recognize PG&E’s efforts to refine and expand the five Commission-approved secondary products and services categories identified in the March 29 Order, we note that we will review any future proposed expansions carefully to ensure that the new products and services are appropriately categorized and to determine if, in fact, the proposed expansion should be placed in a new category.

23. Additionally, we note that PG&E’s current revenue requirement is the subject of an ongoing hearing in the TO10 proceeding, and that while we grant the continued use of the revenue sharing mechanism the resulting credit amount will be determined in that proceeding.

The Commission orders:

(A) PG&E’s petition for a declaratory order is hereby granted, as discussed in the body of this order.

(B) PG&E is directed to move the “marketing of third parties’ poles towers and other facilities for communication-related purposes” to the maintenance and consulting category.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,  
Deputy Secretary.